June 2, 2003

WRITTEN COMMENTS OF

AMERICAN AUTOMOTIVE LEASING ASSOCIATION

SUBMITTED TO THE U.S. DEPARTMENT OF ENERGY

REGARDING DOE's PRIVATE & LOCAL GOVERNMENT FLEET DETERMINATION

68 Fed. Reg. 10320, March 4, 2003
Docket No. EE-RM-FCVT-03-001

The American Automotive Leasing Association (AALA) appreciates the opportunity to comment on DOE's determination that a regulatory requirement for the owners and operators of certain private and local government fleets[1] to acquire alternative fueled vehicles (AFVs) is not "necessary," and thus cannot and should not be promulgated, because such a program would result in no appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States. *68 Fed. Reg. 10320 (Mar. 4, 2003)*. We support DOE's decision.

These comments mark our latest submission to the rulemaking record. Most recently, we (1) testified at DOE May 7, 2003 hearing (see Attachment 1); (2) submitted comments in support of DOE's July 29, 2000 decision to defer making a decision and to hold public workshops (see Attachment 2); and (3) participated in the September 2000 stakeholder workshop in Washington, DC. We incorporate our prior comments by reference.

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[1] As before, although these comments refer to private fleets, our analysis also applies to local government fleets.

Our purpose here is to highlight three points regarding DOE's decision. First, DOE is correct in its assessment that regulation of private fleets would have an inconsequential impact on EPAct's replacement fuel goals. Second, the past decade has demonstrated that fleet programs are not an effective means to further energy, environmental and other societal goals. Third, the private fleet mandate would be counterproductive as well as ineffective.

Regulation of Private Fleets Would Have An Inconsequential Impact on EPAct's Fuel Replacement Goals

We agree with DOE's assessments that (i) even if a mandate were implemented, it "would not appreciably increase the use of replacement fuel" (*68 Fed. Reg. at 10323*); and (ii) the private fleet contribution to attainment of EPAct's goals would be "highly uncertain" under all scenarios (*id. at 10341*). The record reveals that regulation of private fleets simply would not help the nation achieve any fuel replacement goal.

It was suggested anecdotally during the May 7, 2003 hearing that federal imposition of vehicle purchase requirements on private fleets might have a "catalyst effect" on the AFV market. We are not aware of information that suggests that regulation of a small number of private fleets would influence vehicle acquisition decisions of non-regulated fleets or other parties. Such a "catalyst" effect, if it were to occur, would be dependent upon a significant number of fleet operators to voluntarily vouch for the benefits of the vehicles they were forced to acquire. Is that likely? Narrowly focused mandates, such as the private fleet purchase mandate, create adversarial relationships that are not conducive to voluntary acceptance of the outcomes; it is simply human nature. For that reason, as well as the related reasons discussed below, there would be no "catalyst" effect.

It was alleged at the May 7th hearing that fleets are suitable test beds for the introduction of new technologies. For example, it was suggested that technologies such as electronic ignition systems and emission controls are only in use today because the government

mandated their use. Holding aside the validity of this statement, it is simply not an appropriate comparison. We do not believe that the broad-based, upstream regulation of auto manufacturers by EPA, NHTSA and other government agencies has any relationship to the possible narrow, downstream regulation of certain private fleet acquisition markets by DOE. That type of upstream, top-down control is an entirely different matter than compelling a certain subset of vehicle users, who operate near the end of the vehicle distribution chain, to adopt specific technologies with the hope that the technology would spread. We are not aware of any successful environmental or energy program affecting vehicles that has adopted the bottom-up approach. We think this fact calls into question assumptions about the possible spillover effects of private fleet regulation here.

Another issue weighing against the use of fleet vehicles as technology test beds is the fact that fleet vehicles are unique in several respects. Private fleets frequently require different physical characteristics (e.g., trunk capacity) than general population vehicles, for example. Fleet vehicles also are operated and maintained in a manner that makes correlations to general population vehicles difficult.[2]

The fully attributed downtime costs to a private fleet operator is significantly higher than for the general population vehicle user.[3] Pharmaceutical companies provide a good example. A pharmaceutical company depends upon its vehicle fleet to generate sales that, in turn, provide revenue in an amount that greatly exceeds the wages and benefits of the sales representative who is operating the vehicle. A single sales representative will be supported by "back office" staff, production and processing facilities and personnel, etc. If the managed fleet

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[2] We discussed the differences between fleet and general population vehicles in our May 7, 2003 testimony (Attachment 1).

[3] Analysts ascribe a time value for general population vehicle usage at about $13 per hour (see Texas Transportation Institute's 2002 Urban Mobility Study, Appx. B, Exhibit B-1, "cost estimate constants" of $12.85 average cost of time per driver hour for general population.). In

vehicle is out of operation for even a short amount of time because a new technology component has failed or an exotic fuel is not readily available, the pharmaceutical company faces a non-trivial financial loss. Users of managed fleet services need vehicles that are reliable and dependable, using proven technologies.

Fleet Mandates Are Not An Effective Way to Further Energy Goals

In the early 1990's, policymakers hoped that private fleet mandates would spur demand for AFVs. This hope was primarily reflected in two programs -- the pending EPAct private fleet rule, and the Clean Air Act's Clean Fuel Fleet Program (CFFP). We believe that it might be helpful for DOE to review the history and current status of the CFFP as the Department weighs the outcome of this rulemaking.

Enacted as part of the 1990 Amendments to the Clean Air Act, the CFFP originally required the 19 states covering states (with twenty-two metropolitan areas) with significant air quality problems to adopt regulations that compelled covered private fleets to acquire vehicles that met federally mandated clean-fuel emission standards. The Clean Air Act also authorized the states to opt out of the program. In a sign that many regions of the country had their doubts about the program, the vast majority of the states had elected to opt out of the CFFP by 1998. Today, only three areas have an enforced CFFP.

We believe that EPA and the states' CFFP experiences tell a cautionary tale about the utility of fleet programs in general. Although at first blush fleets might appear to be a logical means to test or spur the introduction of new motor vehicle technologies, policymakers' experience with fleet programs demonstrate that such programs rarely, if ever, bear fruit. Governments find fleet programs difficult to manage and enforce. More importantly, the benefits

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contrast, commercial fleet operators calculate that the down time cost for their vehicle users typically range between $75/hr and upwards of $125 a hour.

of such programs are difficult to identify, let alone quantify. Fleet programs simply have not turned out to be effective policy tools.

Fleet Mandates Are Counterproductive

While experience has shown that fleet purchase mandates are not effective, it should be remembered that fleet mandates are counterproductive, too. As we have explained before (see Attachment 1), companies that need to provide their employees with transportation have several options, including managed fleet services. Managed fleet services, which are the preferred choice of many companies, also generate additional benefits for society, including the accelerated introduction of newer vehicles with lower emissions and better fuel economy into the market. Because a company's decision regarding the manner in which it will provide its employees with transportation services is based in large measure upon economic factors, regulatory programs that make managed fleet services inconvenient or uneconomical run a real risk of eliminating those service as a transportation option. The best way to preserve the energy and environmental benefits that managed fleet services provide is to make the decision that DOE has made here. If a company is incentivized, because of a fleet mandate's regulatory costs and burdens, to disband its managed fleet and use a simple driver reimbursement program instead, the environmental and energy benefits of the managed fleet are lost and the fleet has moved outside the reach of the mandate.

We appreciate the opportunity to submit these comments.

Paul Smith
Environmental Counsel
American Automotive Leasing Association

Attachments
May 7, 2003 AALA Testimony
October 9, 2002 AALA Comments

May 7, 2003

TESTIMONY OF

AMERICAN AUTOMOTIVE LEASING ASSOCIATION

SUBMITTED TO THE U.S. DEPARTMENT OF ENERGY

REGARDING DOE's PRIVATE & LOCAL GOVERNMENT FLEET DETERMINATION

68 Fed. Reg. 10320, March 4, 2003
Docket No. EE-RM-FCVT-03-001

Public Hearing
Washington, D.C.
May 7, 2003

The American Automotive Leasing Association (AALA) appreciates the opportunity to comment on DOE's determination that a regulatory requirement for the owners and operators of certain private and local government fleets[4] to acquire alternative fueled vehicles (AFVs) is not "necessary," and thus cannot and should not be promulgated, because such a program would result in no appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States. *68 Fed. Reg. 10320 (Mar. 4, 2003)*. The private fleet program is discretionary under section 507(e) of the Energy Policy Act of 1992 (EPAct), but subject to very prescribed limitations. These comments explain why AALA believes that DOE's determination is right as a matter of law and policy.

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[4] Although these comments refer to private fleets, our analysis also applies to local government fleets.

AALA and the Fleet Industry

AALA is a trade association representing the commercial fleet leasing and management industry, which comprises approximately 3,280,000 of the cars and light duty vehicles used by business throughout the United States. While these vehicles predominantly are used for sales and service functions, the range of commercial and state and local governmental fleet usage is significant.

In contrast to the consumer car leasing business that limits itself to offering the retail public alternative financing, AALA members provide comprehensive fleet consulting and management services to commercial, non-profit, and governmental organizations. The range of services includes --

> (1) selecting and acquiring the most appropriate and cost-effective vehicle for the particular work to be performed;
>
> (2) assisting in operating and maintaining those vehicles safely and economically, including designing and implementing fueling, maintenance, registration, and safety programs, as well as helping ensure that each vehicle is recycled out into the secondary market at the most appropriate time; and
>
> (3) reclaiming, at end of the lease, the highest value from the vehicle through auction, public sale, or other disposal.

These services generate sizeable energy and environmental benefits, two of which are highlighted below:

> (1) **Accelerated introduction of newer, cleaner, and more fuel-efficient vehicles into the broader vehicle market**. It is well established that older vehicles make a disproportionately large contribution to mobile source

emissions and degraded fuel economy performance.[5] These problems are compounded by the fact that general population vehicles are turned over relatively infrequently. Newer vehicles, on the other hand, are cleaner and more fuel efficient. Because managed fleet vehicles are turned over faster than general population vehicles[6], AALA member companies accelerate the introduction of cleaner and more fuel efficient vehicles into the broader vehicle market. The vehicles that AALA member companies turn over, moreover, have been properly maintained, unlike most general population vehicles.[7]

(2) **Rigorous adherence to manufacturer-recommended maintenance schedules, plus other routine maintenance check-ups, leading to improved fuel economy**. Managed fleet vehicles are rigorously maintained in order to maximize vehicle life and performance. That maintenance also enhances vehicle fuel economy.[8] According to a 1995 study by EPA, for example, if vehicle wheel alignment is off by only half an inch, fuel economy (and fuel consumption) may be reduced by as much as 10%. *Fuel Economy Impact of RFG (EPA 420-F-95-003, Aug. 1995)*.

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[5] *Some Issues in the Statistical Analysis of Vehicle Emissions, T. Wenzel, B. Singer & R. Slott, J. of Transportation & Statistics, Vol. 3, No. 2, at 5 (Sept. 2000); Zero-Emission Vehicles: A Dirty Little Secret, H. Gruenspecht, Resources for the Future, no. 142, at 7 (Winter 2001); 2002 Smog Check Evaluation, State of California, I/M Review Committee, at ES-3, 4 (June 19, 2000)*.

[6] A 2001 AALA membership survey indicated that the average replacement cycle for managed fleet cars and LDTs is 32.3 months/64,000 miles (i.e., 2.7 years) and 41.4 months/77,600 miles (i.e., 3.5 years), respectively. In contrast, the typical general population vehicle is 8.3 years old and is driven approximately 11,000-12,000 miles annually. *Growth in Motor Vehicle Ownership & Use: Evidence from the Nationwide Personal Transportation Survey, at 9.*

[7] Data from the Car Care Council demonstrate that a relatively high percentage of general population vehicles fail a variety of routine maintenance inspection items. www.carcarecouncil.org.

[8] The 2001 AALA membership survey also indicated that the majority of AALA members monitors fuel economy as a measure of vehicle performance. Due to technologies such as fleet-sponsored refueling credit cards, fuel economy data are essentially collected and monitored in real time.

These energy and environmental benefits are jeopardized if managed fleets are regulated in a manner that compels private or government fleet operators to disband their organized fleets and replace them with alternatives, such as driver reimbursement programs. A driver reimbursement program consists of privately owned, general population vehicles in the hands of company or government agency employees. The data discussed above demonstrate that, in comparison to fleet-managed vehicles, general population vehicles almost certainly would be operated and maintained in a manner that fails to optimize emissions and fuel economy performance. They also would be turned over at a slower rate than fleet-managed vehicles, a development which would retard, not expedite, the introduction of better-performing vehicles into the broader vehicle market.

A private fleet mandate under EPAct would have been a good example of the type of regulatory program that could have persuaded fleet operators to replace their managed fleets with driver reimbursement programs. This is because, faced with an AFV mandate, fleet operators would have been forced to deal with a host of practical difficulties associated with acquiring AFVs (i.e., reliable supplies of needed vehicles frequently are not available), fueling AFVs (i.e., the refueling infrastructure simply does not exist), and maintaining AFVs (i.e., AFVs cost more to maintain than non-AFV vehicles). The business decision regarding how a company or other entity meets its transportation needs can be and frequently is sensitive to issues such as regulatory burden and market-driven costs. DOE wouldn't have had to do much, in other words, to make driver reimbursement programs operationally and cost-competitive with privately managed fleets.

Such an external influence, likely resulting in a significant portion of those 2.3 million vehicles moving from a controlled fleet management program to an uncontrolled driver reimbursement situation, has a harmful impact on the public, as well as the efficiency of the private sector.

For these and other reasons, AALA has participated throughout DOE's decision-making process by, for example, submitting comments and participating in workshops. We are pleased that DOE, at the conclusion of that process, has decided not to regulate the vehicle acquisition decisions of private fleets. We believe that decision was the only option available to DOE based upon the rulemaking record. We also believe the decision will preserve the environmental and energy benefits that managed fleets provide.

Comments

Our comments are divided into two sections. We first discuss why we support DOE's legal determination that a private fleet program is not "necessary" under EPAct, with a particular emphasis on why such a finding cannot be made even if the Department could lawfully revise the 2010 fuel replacement downward by a sizeable amount. Second, we briefly explain why DOE's decision furthers sound public policy goals and in a manner that supports the legal determination under section 507(e).

I. The Private Fleet Rule is Not "Necessary" Under Any Fuel Replacement Goal

In comments submitted in support of DOE's September 26, 2000 workshop in Washington, DC, AALA discussed the various statutory limits on the discretionary program for private fleets under title V of EPAct.[9] At the time, DOE had described the statutory restrictions as "extremely restrictive," an assessment with which we agreed.[10] We concluded then that the only viable option available to DOE was so-called Option #1 under the department's discussion paper for the rule – i.e., no regulatory requirement for local government and private fleets. We will not repeat our original reasoning here other than to note that our position has not changed since 2000. We continue to believe that the only conclusion which may be drawn from the

[9] *Comments of AALA Submitted to the U.S. Department of Energy Regarding EPAct's Discretionary AFV Program for Local Government and Private Fleets (Oct. 9, 2000).*

[10] *Discussion Paper for State and Local Government Stakeholder Meetings to Discuss Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets, at 6.*

information in the rulemaking record is that a private fleet program is not "necessary" under EPAct. Nothing has been added to the record since 2000 that would enable DOE to make a determination other than not to regulate private fleets. If anything, the record in recent years has been supplemented with additional data that supports that conclusion that the prerequisites for regulating private fleets under section 507(e) cannot be satisfied. Those data include, for example, the news that replacement fuels accounted for less than 3% of total motor fuel consumption in 2001, "up" from "slightly less than" 2% in 1992. *68 Fed. Reg. at 10342.* That information indicates that EPAct's 30%/2010 goal is essentially unreachable at this late date. *See 68 Fed. Reg. at 10321 (DOE noting that "extraordinary measures" would be required to achieve the 30%/2010 goal*). In sum, we believe that DOE not only made the right decision from AALA's perspective, but that the Department made the only decision possible based upon the record before it.

We limit our comments here to a few aspects of DOE's determination that a private fleet rule is not "necessary" within the meaning of EPAct. We understand that DOE's "necessity" determination is based in large measure upon various statutory limits, including, for example, the definitions of covered vehicles and fuels. *68 Fed. Reg. at 10321 ("The statutory definitions of vehicles and fuels in EPAct* are *the key to DOE's determination")*. Those limits helped to convince the Department that, even if a mandate were implemented, it "would not appreciably increase the use of replacement fuel." *68 Fed. Reg. at 10323.* We agree that the statute limits the scope of any private fleet program, which means, in turn, that even if the program were implemented as broadly as possible, the impact on replacement fuels would be negligible.

DOE appropriately goes further, however, and clarifies that it also was unable to make the two specific subordinate findings that support a "necessity" determination. Under section 507(e), those subordinate findings are that the 30%/2010 goal is (i) not expected to be actually achieved without such a fleet program requirement, and (ii) practically and actually

achievable through implementation of such a private fleet mandate in combination with voluntary means. *68 Fed. Reg. at 10341*.[11]

We encourage DOE to explain why the "necessity" finding could not be met even if the Department modified the fuel replacement goal. DOE has explained why it elected not to modify the fuel replacement goal, and we agree with all of those considerations. *68 Fed. Reg. at 10342.* We are particularly persuaded by the fact that (i) the 30%/2010 goal is aspirational, such that it might make little sense to revise it downward by a large margin; and (ii) Congress is poised to enact new comprehensive energy legislation.

We recommend that DOE go further, however, and explain in detail why the section 507(e) "necessity" findings could not be met even if DOE decided to revise the replacement fuel goal downward by a sizeable margin. DOE could do so by noting that (i) a private fleet rule might, at best contribute 0.2 to 0.8% towards a modified goal *68 Fed. Reg. at 10341*); and (ii) the nation is currently at about 2.8% replacement fuel usage, and perhaps less. Accordingly, assuming best conditions, the 2010 goal might have to be revised downward to perhaps no more than 3%. That goal would be illogical, as well as arbitrary and capricious, because Congress set the goal for 2000 at 10% (which also was not met). Congress surely would not have wanted DOE to revise the 2010 goal downward to a level less than that provided for the year 2000.

Even if it could be argued that it would be lawful for DOE to revise the 2010 EPAct goal downward and in a manner that conflicted with the statutory scheme, the miniscule contribution towards such a revised goal that regulation of private fleets might provide could not be guaranteed in light of DOE's separate finding that the private fleet contribution would be "highly

[11] We encourage DOE to ensure that the specific findings (which are in proposed form on page 10341, column 1 of the Federal Register notice) fully comport with the language in section 507(e).

uncertain" under all scenarios. *68 Fed. Reg. at 10341*. In other words, a "necessity" finding could not be met even if the 2010 goal could be lawfully revised downward to 3%.

The record reveals that regulation of private fleets simply will not help the nation achieve any fuel replacement goal. No other conclusion is possible based upon the rulemaking record. We encourage DOE to make that point clear.

II. Incentives are better Public Policy

AALA believes that DOE's decision furthers several important policy goals, too. First and foremost, the past decade has demonstrated that fleet mandates such as these are not effective in achieving their goal.[12] Despite DOE's best efforts under EPAct, including AFV programs for federal and fuel provider fleets, replacement fuels accounted for less than 3% of total motor fuel consumption in 2001 (*68 Fed. Reg. at 10342*), well short of EPAct's 30% goal by 2010. The Administration's May 2001 Energy Policy Report similarly noted that the EPAct fleet scheme is not sound policy:

> The success of the federal alternative fuel programs has been limited, however. The program focuses on mandating that certain fleet operators purchase alternative fueled vehicles. The hope was that this vehicle purchase mandate would lead to expanded use of alternative fuels. That expectation has not been realized.

National Energy Policy: Report of the National Energy Policy Development Group, at I-14, 6-9 (May 2001).

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[12] AALA has long expressed its preference for incentives instead of mandates. The effectiveness of incentives is well established. *The Changing Face of Transportation, at 5-25* (U.S. DOT, Preliminary Draft, Sept. 2000) ("history … suggests technological and institutional evolution work best in concert with market forces and reinforce other important societal goals"); *Energy Policy Act of 1992: Limited Progress in Acquiring Alternative Fuel Vehicles and Reaching Fuel Goals*, at 5 (GAO/RCED-00-59, Feb. 2000) (noting that tax credits and other financial incentives could help fleets overcome economic impediments posed by AFVs and alternative fuels) ("GAO Report").

Recognizing that mandates do not work, the Administration has recommended that the federal alternative fuels program be reformed to promote the use of alternative fuels "instead of mandating the purchase of vehicles that ultimately run on petroleum fuels." *Id. At 6-9.* This very issue remains in play on the Hill as debates regarding comprehensive energy legislation continue. Although it is too early to predict the outcome of those debates, it is quite possible that Congress will enact a new renewable fuels program that would greatly increase the transportation industry's consumption of ethanol and perhaps other renewable fuels. Although we have not taken a formal position on such a renewable fuels program, our initial reaction is that such a program could do more to decrease the nation's reliance on imported petroleum fuels than an AFV fleet mandate program could ever hope to achieve.

DOE would be in good company in issuing a strong statement against such mandates. Late last month, in a hearing held on April 24th at which CARB decided to do away with its ZEV mandate, CARB Chairman Alan C. Lloyd remarked that "Mandates [such as the ZEV mandate] alone cannot overcome the nature of physics … or some other technical challenges that are bedeviling both the industry and us." *California Adopts Changes to ZEV Program Giving Automakers Reprieve from Quotas, Daily Report for Executives, A-3 (BNA, April 28, 2003).*

Second, and to the extent that policymakers desire to modify the nation's use of transportation fuels, whatever policy is selected must be applied broadly and upstream, not narrowly and downstream. An example of the former is the renewable fuels program that is currently being debated in Congress. If enacted, it would have the potential to affect fuel consumption in literally millions of vehicles nationwide. An example of the latter is the discretionary private fleet program under EPAct. Nothing in DOE's voluminous rulemaking record indicates that the imposition of AFV mandates at the level of individual fleets could ever hope to make a noticeable dent in the nation's fuel consumption pattern. As DOE itself has stated (*68 Fed. Reg. at 10339*),

> A potential private and local fleet program under authority provided to DOE by EPAct would be expected to contribute, at best, an extremely small amount toward achievement of replacement fuel goals. Even without the statutory limits in EPAct [on such a fleet program], such a contribution would still be very small.

Third, and as discussed above, managed fleets provide a variety of environmental and energy benefits that would undermined, if not eliminated, were the vehicle acquisition decisions of such fleets to be regulated. Managed fleets currently serve as important accelerators in the introduction of newer, cleaner, and more efficient vehicles into the general vehicle market. It makes little sense for the government to institute policies that subvert those important benefits.

Finally, we find it interesting that the policy considerations regarding fleet mandates (i.e., mandates simply do not work and if anything are counter-productive) lead to the same conclusion as that provided by the legal analysis under section 507(e) (i.e., mandates simply do not work because as a factual matter that do not contribute to any fuel replacement goal). DOE should take comfort from these results, too.

Conclusion

AALA supports DOE's determination that a private fleet rule is not "necessary" within the meaning of section 507(e) of EPAct. We encourage DOE to bolster that determination with a specific finding that the "necessity" analysis could also not be satisfied even if DOE were to revise the 30%/2010 goal dramatically downward and in a manner that conflicted with the statutory scheme. We also recommend that DOE note that private fleet mandates reflect poor public policy for several reasons, including the subversion of the various environmental and energy benefits that managed fleets provide.

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We appreciate the opportunity to submit these comments.

Paul Smith
Environmental Counsel
American Automotive Leasing Association

October 9, 2000

COMMENTS OF

AMERICAN AUTOMOTIVE LEASING ASSOCIATION

SUBMITTED TO THE U.S. DEPARTMENT OF ENERGY

REGARDING

EPACT'S DISCRETIONARY AFV PROGRAM FOR LOCAL GOVERNMENT AND PRIVATE FLEETS

10 CFR Part 490
Docket No. EE-RM-98-507
Public Workshop Series

The American Automotive Leasing Association (AALA) appreciates the opportunity to comment on the discretionary alternative fueled vehicle (AFV) program for local government and private fleets[13] under section 507(e) of the Energy Policy Act of 1992 (EPAct). We are submitting these comments in support of the July 29, 2000 decision by the Department of Energy (DOE, or the Department) to defer proposed rulemaking and to hold public workshops. *65 Fed, Reg. 44,987 (2000)*.

AALA and the Fleet Industry

AALA is a trade association representing the commercial fleet leasing and management industry. The industry owns approximately 3,560,000 of the cars and light duty vehicles used by business throughout the United States. While these vehicles predominantly are used for sales

[13] Although these comments refer to private fleets, our analysis also applies to local government fleets.

and service functions, the range of commercial and state and local governmental fleet usage is significant.

In contrast to the consumer car leasing business that limits itself to offering the retail public alternative financing, AALA members provide comprehensive fleet consulting and management services to commercial, non-profit, and governmental organizations, and involve an array of ongoing, post-purchase responsibilities. The range of services include--

> (1) selecting and acquiring the most appropriate and cost-effective vehicle for the particular work to be performed,
>
> (2) assisting in operating and maintaining those vehicles safely, economically, including designing and implementing fueling, maintenance, and safety programs, as well as ensuring compliance with state and local registration and operating requirements, and
>
> (3) reclaiming, at end of the lease, the highest value from the vehicle through auction, public sale, or other disposal.

So, in most cases, although it is our customer who is the fleet operator, we have a major stake in programs that impact fleet vehicles.

To understand our concerns about EPAct's discretionary program for private fleets, it is important to realize that for fleet operators there are alternatives to using an organized fleet to meet the transportation needs of a business or governmental entity. One of the more common alternatives available to our members' customers is to disband a fleet and revert to a driver reimbursement program. Driver reimbursement programs are not only exempt from EPAct requirements, they tend to counter, not promote, national energy and environmental policy objectives[14]. The business decision about whether to use driver reimbursement programs or

[14] Under such programs, work-related travel is provided by the employee's own vehicle and the employee is reimbursed on a per mile or similar basis. Thus the environmental and energy benefits of an organized and properly maintained fleet are lost. Employee-owned vehicles tend to be older, less fuel-efficient, and less well maintained than a corresponding fleet vehicle.

establish an organized fleet can be highly sensitive to regulatory as well as market-driven costs and burdens.

Comments

Our comments are divided into two sections. We first discuss the statutory limits of the discretionary program for private fleets under title V of EPAct. We conclude by offering specific comments on several of the issues raised in DOE's (i) July 20, 2000 Federal Register notice (*65 Fed. Reg. 44,987*) and (ii) the undated Discussion Paper in support of the public workshops (*Discussion Paper for State and Local Government Stakeholder Meetings to Discuss Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets*) ("*Discussion* Paper").

I. EPAct Requirements Related To Private Fleets

DOE's proposals must be viewed in light of title V of EPAct. Title V provides the Department with limited authority to subject private light-duty fleets to an AFV acquisition mandate. DOE has described the limits on its authority to regulate private fleets as "extremely restrictive." *Discussion* Paper, at 6. Moreover, unlike the mandatory fleet programs for fuel provider and State fleets, the private fleet program is discretionary. See *H. Rep. No. 102-474, Part 1, at 189 (Mar. 30, 1992)* ("**If** the Secretary begins the program …") (emphasis added). Title V granted DOE with authority to trigger the discretionary private fleet program in one of two ways: an "early" rulemaking under section 507(b), or a late "rulemaking" under section 507(g). Both options carefully prescribe the means in which DOE may regulate private fleets.

Early Rulemaking. Section 507(b) authorized DOE to regulate private fleets pursuant to an "early" rulemaking to be completed by December 15, 1996. DOE could have invoked that authority only if the Department determined that a private fleet mandate was "necessary" based upon the following affirmative findings (§ 507(b)(2)):

(1) Regulation of private fleets was necessary to achieve EPAct's motor fuel replacement goal of 10% by the year 2000 and 30% by 2010 (§§ 502(b)(2), 507(b)(1)(A));

(2) A replacement fuel goal was "practical and actually achievable" within identified time frames "through implementation of such a fleet requirement program in combination with voluntary means" (§ 507(b)(1)(B)); and

(3) DOE was able to address all of the following private fleet operational issues:

(i) There existed "sufficient evidence to ensure that the fuel and the needed infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas … and will be fully operational when the rule is effective to offer a reliable and timely supply of the applicable alternative fuel at reasonable costs" (§ 507(b)(1)(C)(i)). In order to ensure that the fuel demands of private fleets were met, DOE was to obtain voluntary supply commitments from fuel providers (§§ 505(1), 507(b)(1)(C)(i)).

(ii) There was "a sufficient number of new [AFVs] from original equipment manufacturers that comply with all applicable requirements of the Clean Air Act and the National Traffic and Motor Vehicle Safety Act of 1966" (§ 507(b)(1)(C)(ii)).

(iii) "[S]uch new vehicles will meet the applicable non-Federal and non-State fleet performance requirements of such fleets (including range, passenger or cargo-carrying capacity, reliability, refueling capability, vehicle mix, and economical operation and maintenance)" (§ 507(b)(1)(C)(iii)).

(iv) "[E]stablishment of a fleet requirement program … will not result in unfair competitive advantages or disadvantages, or result in undue economic hardship, to the affected fleets" (§ 507(b)(1)(C)(iv)).

After holding three hearings and reviewing more than 100 written comments, DOE was unable to make these affirmative findings and terminated the rulemaking on April 23, 1999. *62 Fed. Reg. 19,701 (1997).*

***Later Rulemaking*.** DOE next invoked its "later" rulemaking authority under section 507(g), which called for a rulemaking to be completed by January 1, 2000. *63 Fed. Reg. 19,372* (1998) (ANPR). Like the "early" rulemaking, DOE's authority to subject private fleets to an AFV

mandate under section 507(g) is contingent upon an affirmative finding by the Department that a mandate is "necessary" (§ 507(e)(1)). Building upon the administrative record compiled under section 507(b), such a private fleet mandate program is only "necessary" if DOE finds that: (1) EPAct's fuel replacement goal is not expected to be met by voluntary means or any other measure; and (2) EPAct's fuel replacement goal is "practical and actually achievable within [applicable time periods] through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals" (§§ 507(e)(1)(A), (B)).

DOE's ability to regulate private fleets under these provisions is subject to several limits:

- DOE may not increase the mandate's percentage AFV acquisition requirements, but may decrease them (§ 507(g)(2)).

- DOE may not implement the mandate prior to model year 2002, but may delay the program's start date indefinitely (id.).

- Nothing in EPAct "shall be construed as requiring any fleet to acquire [AFVs] or alternative fuels that do not meet the normal business requirements and practices and needs of that fleet" (§ 507(g)(3)). DOE may not require fleet owners to acquire conversion vehicles (§ 507(j)).

- Any private fleet program must provide for the "prompt exemption" through a "simple and reasonable process" of any fleet from the AFV mandate, in whole or in part, if the fleet makes one of two showings. Exemption would occur if (1) AFVs that meet the fleet's normal business requirements and practices are not "reasonably available"; or (2) alternative fuels that meet the fleet's normal business requirements and practices are "not available" in the fleet's operational area (§ 507(i)). In addition, private fleet owners or operators must be provided with procedures to petition DOE to "modify or suspend a fleet program requirement … nationally, by region, or in an applicable fleet area" based upon inadequate fuel supplies, infrastructure, or distribution for that fleet (§ 507(n)). If a regional suspension would undermine EPAct's entire fleet program, DOE **must** modify or suspend the program nationally (id.).

- Vehicles that are garaged at home at night may not be regulated (§ 507(i)(2)).

- Fleets must be eligible to receive transferable credits for excess or early vehicle purchases (§ 508).

- DOE has "no authority … to mandate the production of [AFVs] or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles" subject to EPAct (§ 504(c)).

- DOE must make its determination under the "later" rulemaking provision by no later than March 31, 2000, or ninety days from January 1, 2000 (§ 507(h)). See, e.g., H. Rep. No. 102-474, Part 1, at 189 (Mar. 30, 1992) ("Prior to January 1, 2000, the Secretary must determine whether such a fleet requirement program is necessary").

Consistent with the discretionary nature of EPAct's requirements for private fleets, EPAct outlines the steps that DOE must take if it determines that regulation of private fleets is not necessary. DOE first must explain its findings in a Federal Register notice (§ 507(f)). The Department then must make recommendations to Congress for "requirements or incentives" for fuel suppliers, AFV producers, and all "motor vehicle drivers" -- not just private fleet owners and operators -- related to achieving EPAct's fuel replacement goal (§ 509). DOE's recommendations must ensure the "fair and equitable" application of requirements on fuel, and AFV suppliers and purchasers.

DOE did not complete the "later" rulemaking by the statutory deadline of January 1, 2000. Instead, as allowed under EPAct, the Department extended the rulemaking period for one 90-day period, or until March 31, 2000. *65 Fed. Reg. 1831 (2000).*

On July 20, 2000, DOE announced that it had paused the rulemaking and invited comment on several options. *65 Fed. Reg. 44,987 (2000).* The first option is no regulatory requirement for private fleets. The second option is the full section 507(g) program for private fleets (with possible lower acquisition percentages and extended time frames, as allowed by EPAct). The third option is the same as the second, but contains a voluntary opt-in "Fleet Rewards Program" as an additional compliance scheme to encourage the use of alternative fuels. The fourth option, known as a "Replacement Fuel Program," also would be based upon

the section 507(g) program, but would require fleets to use in increasing percentage of replacement fuels (as opposed to AFVs). Id. at 44,989-990.[15]

II. AALA Comments on DOE's Options

AALA supports DOE's decision to pause the rulemaking under section 507(g) to consider the merits of regulation private fleets. We are pleased that DOE has not proceeded with the AFV mandate for private fleets, but instead is soliciting additional views from fleets owners/operators and other stakeholders on various regulatory options, several of which are based upon incentives. AALA has long expressed its preference for incentives instead of mandates. The effectiveness of incentives is well established. *The Changing Face of Transportation, at 5-25* (U.S. DOT, Preliminary Draft, Sept. 2000) ("history … suggests technological and institutional evolution work best in concert with market forces and reinforce other important societal goals"); *Energy Policy Act of 1992: Limited Progress in Acquiring Alternative Fuel Vehicles and Reaching Fuel Goals*, at 5 (GAO/RCED-00-59, Feb. 2000) (noting that tax credits and other financial incentives could help fleets overcome economic impediments posed by AFVs and alternative fuels) ("GAO Report"). We support DOE's recognition of the crucial role that incentives can play in any regulatory scheme geared towards fleets.

AALA also believes that DOE must proceed in light of the authority that Congress has granted it under title V of EPAct, even when the Department is crafting incentive-based programs. DOE's authority to regulate private fleets is limited by numerous "extremely restrictive" statutory requirements. *Discussion* Paper, at 6. Applying those requirements under EPAct's "later" rulemaking provisions, we believe that the only viable option available to DOE is Option #1 -- *i.e*., no regulatory requirement for local government and private fleets. Nothing in the rulemaking record indicates that the Department is capable of making the findings necessary to proceeding with an AFV mandate under section 507(g). In particular, we doubt whether DOE could affirmatively conclude that EPAct's fuel replacement goal is "**practical and actually achievable** … through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals" (§§ 507(e)(1)(A), (B)) (emphasis added).

[15] We express no view at this time about the other options identified by DOE: (i) allowing fleets other than those covered by section 507(g) to participate in the Fleet Rewards Program and/or Replacement Fuel Program, and (ii) invoking separate authority under EPAct to regulate urban buses, Id.

The recent GAO documented numerous reasons why EPAct's fuel replacement goal is *impractical*, even assuming full implementation of all of title V's fleet program requirements:

> [I]t is important to recognize that even if all the mandated fleets operated by these groups would fully comply with their acquisition targets, the goals for petroleum fuel replacement would not be met. The number of vehicles in these fleets and their total use of alternative fuels has been relatively small compared to the number of vehicles that would be needed to meet the act's fuel replacement goals. DOE estimated that, if federal agencies, state governments, and alternative fuel providers fully complied with the act's mandates, the vehicles in their fleets would replace less than 1 percent of petroleum fuels in 2010. This amount is far below the act's goals of 10 and 30 percent replacement in 2000 and 2010, respectively. **DOE has estimated that if an acquisition mandate were established for the private sector and local governments, their compliance would increase the fuel replacement percentage to about 2 percent**. *GAO Report*, at 10 (emphasis added).

We do not believe that DOE could mitigate these concerns by modifying EPAct's fuel replacement goals or deadlines. The impediments facing AFV and alternative fuel usage by fleets under EPAct's structure appear to be insurmountable at this time. As GAO noted, AFVs create numerous fundamental economic impediments: (1) the cost differential between gasoline and alternative fuels; (2) the lack of refueling stations; and (3) the high cost to acquire AFVs. *GAO Report*, at 12-17. The impediments are particularly acute for fleet owners/operators because they face competitive pressures in the marketplace. Given that title V of EPAct compels DOE to consider the operational and economic concerns of private fleets before subjecting them to an AFV mandate, we believe that Option #1, no fleet mandate, is DOE's only choice.

We note that the time allowed for DOE to invoke its "later" rulemaking authority apparently has lapsed, leaving the Department with no choice but to decline to proceed under section 507(g) (§ 507(h)). The deadlines that Congress provided in title V must be given meaning, or else they are superfluous, an outcome that Congress almost certainly did not intend. We believe that Congress limited the time that DOE had to consider regulation of fleets to ensure that EPAct's goals and approaches could be reconsidered by the legislative branch at the conclusion of an appropriate period of time. This reading of the deadlines on DOE's authority is regulate is consistent with section 509, which specifies the DOE must submit an appropriate report to Congress if the private fleet mandate is not invoked, and with EPAct's

replacement fuel goal provisions, which also are tied to specific years. Congress clearly intended DOE to consider certain actions at specific times in order to make progress towards time-limited goals. Any other reading of EPAct is inconsistent with the statutory scheme.

Because we support Option #1, we oppose Option #2 -- *i.e.*, imposing the full section 507(g) program on private fleets. Under Option #2, DOE further noted that "[o]ne approach to increasing alternative fuel usage could have been to promulgate a rule, based upon Section 507(g), which requires alternative fuel usage." *Discussion Paper*, at 3. We concur with the Department's preliminary assessment that it has no authority to require private fleets to use alternative fuels. Nothing in EPAct "shall be construed as requiring any fleet to acquire [AFVs] or alternative fuels that do not meet the normal business requirements and practices and needs of that fleet" (§ 507(g)(3)). Mandating fuel usage is not an option.

AALA has concerns about Options #3 (the Fleet Rewards Program) and #4 (the Replacement Fuel Program). We understand that the Fleet Rewards Program would be based upon the section 507(g) fleet program, but would contain a voluntary component under which fleets could meet the mandate through a combination of AFV acquisitions and alternative fuel use. As discussed, we do not believe that DOE may invoke the section 507(g) program on the current record. Since the Fleet Rewards Program is contingent upon section 507(g), it likewise appears to be invalid. Even if DOE could make the findings necessary to invoke section 507(g), the flexibility that the Fleet Rewards Program purports to provide fleet owners/operators seems to be illusory. The "number of refueling stations for alternative fuels … is far below the level that would be necessary" to sustain nationwide fleet operations. *GAO Report*, at 13. Acquiring alternative fuels instead of AFVs thus would not be an option for most fleet operators.

Option #4, the Replacement Fuel Program, seems to suffer similar defects. Under this program, fleets would be required to reduce their light-duty vehicle petroleum usage by increasing the percentage of their light-duty vehicle's fuel use that must consist of replacement fuels. DOE indicates that this approach would allow fleets "maximum flexibility" while creating opportunities that "are currently precluded by the extremely restrictive wording within several parts of EPACT related to the existing fleet programs." *Discussion Paper*, at 5-6. We do not believe that DOE may circumvent the limits on its ability to regulate private fleets by creating a new fuels program. As discussed above, EPAct prohibits DOE from requiring private fleets to

take any action that would impair their economic or operational performance, including compelling fleets to use alternative fuels.

DOE suggests that the alternative fuels portions of the Fleet Rewards and Replacement Fuel Programs might be authorized under section 504(c). Section 504(c) grants DOE authority to engage in rulemaking if it determines that achievement of EPAct's fuel replacement goal "would result in a significant and correctable failure to meet the program goals described in section 502(a)" (id.). The program goals in section 502(a) include promoting the development and use in light-duty vehicles of "domestic replacement fuels" while "reducing oil imports, improving the health of our Nation's economy and reducing greenhouse gas emission" (§ 502(a)). DOE previously has implied that section 504(c) provides it with "additional, albeit limited," authority to regulate private fleets through means other than an AFV acquisition mandate. *63 Fed. Reg. at 19,373.*

We do not believe that section 504(c) provides DOE with authority to create a new, fleet-based alternative fuel program. Section 507, not section 504, deals with private fleets. Under section 507, Congress specified that private fleets, if they were to be regulated at all, would face an AFV acquisition mandate only. No reading of section 504 -- a general provision dealing with EPAct's fuel replacement goal -- may trump the more specific provisions for private fleets set forth in section 507. Congress outlined the steps that DOE must take if it decides that the section 507(g) program is not necessary -- namely, publishing a Federal Register notice (§ 507(f) and reporting to Congress (§ 509). Creating an alternative fuel program is not one of the options available to DOE under the statutory scheme.

We understand the DOE maintains that section 502(a) also authorizes the Department to create a new alternative fuel program that could be focused on fuel usage by fleets. Section 502(a) provides:

> The Secretary shall establish a program **to promote** the development and use in light-duty motor vehicles of domestic replacement fuels. Such a program shall **promote** the replacement of petroleum motor fuels with replacement fuels to the maximum extent **practicable**. (emphasis added)

Nothing in section 502(a), which talks about "promotion," authorizes DOE to mandate fuel usage by private fleets. Quite the opposite, Congress made clear throughout title V of

EPAct that DOE could take no action that would impair the operation of private fleets (§ 507(b)(1)(C)(iv)). EPAct provided that "Nothing in **this title** shall be construed as requiring any fleet to acquire [AFVs] or alternative fuels that do not meet the normal business **requirements** and **practices** and **needs** of that fleet" (§ 507(g)(3) (emphasis added)). Given these and the many other protections for private fleets that Congress built into title V, it strains credibility to think that section 502 could be read to impose a fuel acquisition or usage mandate on fleets.

DOE reads subsection 504(a) out of context with the rest of section 504 if the Department believes that the provision provides it with any authority to regulate fuel usage by private fleets. Section 504, in its entirety, merely authorizes DOE to engage in research and public education efforts related to alternative fuels. Section 504(a) talks about a fuel "promotion" program. Section 504(b) states that DOE, -- in light of the section 504(a) program and before October 1, 1993 -- was supposed to engage in certain research and analyses on alternative fuels. Specifically, under Section 504(b), Congress authorized DOE **to estimate** fuel capacity issues (§ 504(b)(1)); **to determine** the most suitable means of **encouraging** alternative fuel usage (§ 504(b)(3)); **to identify** "ways to **encourage**" alternative fuel usage and the barriers to such use (§ 504(b)(4) (emphasis added)); and **to determine** the greenhouse gas implications of its findings (§504(b)(5)). Nothing in section 504 refers to DOE issuing regulations to regulate private fleets.

This distinction between "promote" and "mandate" is more than a question of lexicon. AALA believes that if the nation is to achieve meaningful fuel alternatives, and is looking to the private and public fleets as a means, then the Government must look to promotion and incentives. The relatively small size of the fleet market can not provide coerced results at any significant scale. However, it can be leveraged to provide a demonstration of success or failure in the use of AFVs. Common sense suggests that mandates and coerced means are more prone to failed outcomes, while promotion and incentives are more likely to lead to a successful demonstration of AFVs and alternative fuel use. Mandates may garner the attention of private and public fleets, as these workshops have shown, but that attention does not necessarily translate into cooperation. To the contrary, mandates create an inherently adversarial relationship that even when coupled with incentives are destined to lead to mixed results at best.

Mandates that target private fleets are an out-dated approach. They came in the forefront over a decade ago as a "tool" for environmental and energy purposes. Out of the 22 non-attainment areas that were supposed to have Clean Fleet Programs under the Clean Air Act, less than a half-dozen are now in place. Likewise the experience under EPAct itself has not been stellar. The same is true for numerous municipalities across the country. In short, private fleet mandates have proven to be an ill-conceived and dated statutory approach. Fortunately, Congress provided agencies sufficient regulatory discretion to withhold implementation.

Conclusion

AALA believes that there are numerous statutory and policy reasons why DOE should conclude that regulation of private fleets is not appropriate under section 507(g). The issue of AFV and alternative fuel usage is a matter requiring involvement of "a larger section of the driving public," not just fleets. *GAO Report*, at 19. We concur with GAO that "the overall goal of reducing petroleum use … will require [DOE] and the Congress to consider and chose among broader policy alternatives." Id. at 20. Congress already is doing so, in part, in the context of legislation regarding MTBE and other fuel oxygenates that may or may not be based upon renewable fuels. Nearly ten years after enactment of EPAct, these choices are best left to Congress, not DOE.

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We appreciate the opportunity to submit these comments.

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